

**78A-12-203. Judicial performance evaluations.**

(1) Beginning with the 2012 judicial retention elections, the commission shall prepare a performance evaluation for:

(a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

(b) each justice of the Supreme Court in the third, seventh, and ninth year of the justice's term.

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only:

(a) the results of the judge's most recent judicial performance survey that is conducted by a third party in accordance with Section 78A-12-204;

(b) information concerning the judge's compliance with minimum performance standards established in accordance with Section 78A-12-205;

(c) courtroom observation;

(d) the judge's judicial disciplinary record, if any;

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge; and

(g) any other factor that the commission:

(i) considers relevant to evaluating the judge's performance for the purpose of a retention election; and

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation under Subsection (2), which shall include the following:

(a) an indication of who may perform the courtroom observation;

(b) a determination of whether the courtroom observation shall be made in person or may be made by electronic means; and

(c) a list of principles and standards used to evaluate the behavior observed.

(4) (a) As part of the evaluation conducted under this section, the commission shall determine whether to recommend that the voters retain the judge.

(b) (i) If a judge meets the minimum performance standards established in accordance with Section 78A-12-205, there is a rebuttable presumption that the commission will recommend the voters retain the judge.

(ii) If a judge fails to meet the minimum performance standards established in accordance with Section 78A-12-205, there is a rebuttable presumption that the commission will recommend the voters not retain the judge.

(c) The commission may elect to make no recommendation on whether the voters should retain a judge if the commission determines that the information concerning the judge is insufficient to make a recommendation.

(d) (i) If the commission deviates from a presumption for or against recommending the voters retain a judge or elects to make no recommendation on whether the voters should retain a judge, the commission shall provide a detailed explanation of the reason for that deviation or election in the commission's report under Section 78A-12-206.

(ii) If the commission makes no recommendation because of a tie vote, the commission shall note that fact in the commission's report.

(5) (a) The commission shall allow a judge who is the subject of a judicial performance retention evaluation and who has not passed one or more of the minimum performance standards on the midterm evaluation or on the retention evaluation to appear and speak at any commission meeting, except a closed meeting, during which the judge's judicial performance evaluation is considered.

(b) The commission may invite any judge to appear before the commission to discuss concerns about the judge's judicial performance.

(c) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(d) Any record of an individual commissioner's vote on whether or not to recommend that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(e) The commission may only disclose the final commission vote on whether or not to recommend that the voters retain a judge.

(6) (a) The commission shall compile a midterm report of its judicial performance evaluation of a judge.

(b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.

(c) The report shall be provided to the evaluated judge and the presiding judge of the district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the midterm report shall be provided to the chair of the board of judges for the court level on which the evaluated judge serves.

(7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

Amended by Chapter 209, 2013 General Session